IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 1 OF 2005.

Shri Pravin Kumar,
son of Shri Ram Yatan Prasad
Garrison Engineer,
MES, Vasco, Goa,
r/o 81-B, Ward Room,
INS Hansa, Vasco. .... Petitioner

Versus

The State,
Through Central Bureau of Investigation,
through its Public Prosecutor,
with his office at Panaji, Goa. .... Respondent.

Shri V.P. Thali, Advocate for the Petitioner.

Shri S.R. Rivonkar, Special Public Prosecutor for the Respondent.

CORAM: N. A. BRITTO, J.

Date of reserving the Judgment: 18.02.2005
Date of pronouncing the Judgment: 24.02.2005

J U D G M E N T:

Heard. Admit. By consent heard forthwith.

2. This revision is directed against the Order dated 18.11.2004 of the learned Special Judge, Margao, by which the learned Special Judge has ordered the framing of the charge against the applicant/accused under Sections 7 and 13(2) r/w S.13(1)(d) of the Prevention of Corruption Act,

1988.

3. The accused is a public servant who, at the relevant time was working as a Garrison Engineer, Project (P), Naval Works (NW), Vasco. The allegations against the accused is that on or about 19.8.02 the accused demanded illegal gratification of Rs.5000/- from Shri Umesh Slagaonkar, partner of M/s. S.K. Salgaonkar and Bros., Vasco, Goa, as motive or reward for recommending the extension period for completion of the works of construction for the Navy at Nofra, Goa, and, on 20.8.02 accepted the same, pursuant to the said demand.

4. At the time of framing of the charge by the learned Special Judge in Special Case No.5/03, the accused raised the point of sanction submitting that the sanction for his prosecution ought to have been granted by the Central Vigilance Commission and not by the Central Government.

5. Now before this Court, on behalf of the accused, two submissions have been made. The first is that the case against the accused could not have been investigated by the Central Bureau of Investigation (CBI, for short), but ought to have been investigated by the Central Vigilance Commission as can be seen from Section 8(1)(d) of the Central Vigilance Commission Act, 2003 (Act, for short) and which reads as follows :-

> " 8. Functions and powers of Central Vigilance Commission. - The functions and powers of the Commission shall be to -
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> (a) .....
>
> (b) .....
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> © .....
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> (d) inquire or cause an inquiry or investigation to be made into any complaint against any official belonging to such category of officials specified in sub-section (2) wherein it is alleged that he has committed an offence under the Prevention of Corruption Act, 1988 (49 of 1988) and an offence with which a public servant specified in sub-section (2) may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial; "

6. The second submission is that the Sanction Order dated 24.9.03 reflects non-application of mind and could not have been signed on behalf of the President by the Under Secretary in the Ministry of Defence.

7. To understand the first submission, it is necessary to refer to the brief history behind the Central Vigilance Commission Act '03.

8. The Delhi Special Police Establishment Act, 1946 was enacted for the purpose of constitution of a special force in Delhi for the investigation of certain offences in the Union Territories, for the superintendence and

administration of the said force and for the extension to other of the powers and jurisdiction of members of the said force in regard to the investigation of the said offences. Section 3 of the D.S.P.E. Act, 1946 provides that the Central Government may, by notification in the Official Gazette, specify the offences or classes of offences which were to be investigated by the Delhi Special Police Establishment and Section 6 thereof further provides that The Delhi Special Police Establishment could exercise powers and jurisdiction in any area in a State with the consent of the Government of that State. Section 4 of the D.S.P.E. Act, 1946, as it then stood, provided, that the superintendence of the Special Police Establishment shall vest in the Central Government.

9. The Central Vigilance Commission was set up by the Central Government by a resolution dated 11.2.64. The said resolution, inter alia, provided that in exercise of its powers and functions, the Central Vigilance Commission would not be subordinate to any Ministry/Department and though it was attached to the Ministry of Home Affairs, Government of India, it would have the same measure of independence and autonomy as Union Public Service Commission. The Central Vigilance Commissioner was to be appointed by the President by warrant under his hand and seal and he could have been removed or suspended only in the manner provided for the removal or suspension of the Chairman of the Union Public Service

Commission. Subsequently by another resolution of November, 1995 the resolution of 11.2.64 was amended and the provisions for the appointment of the Central Vigilance Commissioner by the President by warrant under his hand and seal was deleted. Subsequently in September, 1997 the Central Government constituted Independent Review Committee to suggest measures for strengthening, inter alia, anti corruption activities as part of its efforts against corruption and the said Review Committee recommended that the Central Govt. may consider the question of conferring statutory status to Central Vigilance Commission. In the meantime it was noticed that the CBI and other revenue authorities when it came to investigation of cases against the high and the mighty or the influential and powerful would sometimes develop cold feet. One of the writ petitions which was filed before the Hon'ble Supreme Court and which ultimately came to be disposed of in **Vineet Narain and others v. Union of India and another (1998 Cri.L.J. 1208)** showed that the allegations were made that the CBI and other revenue authorities had failed to perform their duties and legal obligations inasmuch as they had failed to investigate matters arising out of seizure of 'Jain diaries', etc. and they had failed to investigate and take the matters to its logical conclusion and prosecute all persons who were found to have committed the offences and that was done with a view to protect the persons involved who were influential and powerful; that the matter disclosed a nexus between crime and corruption at high places in public

life and it posed a serious threat to the integrity, security and economy of the nation; that probity in public life, the rule of law and the preservation of democracy required that the Government agencies be compelled to duly perform their legal obligations and to proceed in accordance with law against every person involved, irrespective of where he was placed in the political hierarchy. The Hon'ble Supreme Court, therefore, thought that it was necessary to take measures to ensure permanency in the remedial effect to prevent revision to inertia of the agencies in such matters. The Supreme Court further took note of the Vohra Committee report which was appointed by the Government of India to take stock of all available information about the activities of crime syndicates/mafia organisations which had developed links with and were being protected by, Government functionaries and political personalities; and, ultimately, the Supreme Court , inter alia, recommended that the CVC be conferred statutory status; appointment of Central Vigilance Commissioner to be made under the hand and seal of the President, etc.

10. As a result of the said recommendations, the Central Government promulgated an Ordinance, namely Central Vigilance Commission Ordinance, 1998 and then again the Central Vigilance Commission (Amendment) of Ordinance 1998 and later the bill was introduced which after having been passed by Lok Sabha it could not be passed by Rajya

Sabha as the 12th Lok Sabha was dissolved and ultimately the Central Vigilance Commission Act, 2003 came to be passed having its object the constitution of a Central Vigilance Commission to inquire or cause inquiry to be conducted into the offences alleged to have been committed under the Prevention of Corruption Act, 1988 by certain categories of public servants of the Central Government, Corporations, establishment by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government and for matters connected therewith or incidental thereto. The Act, inter alia, replaced S.4 of the Delhi Special Police Establishment Act, 1946, to read as follows :-

> " [4. Superintendence and administration of Special Police Establishment. -
>
> (1) The Superintendence of the Delhi Special Police Establishment insofar as it relates to investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988 shall vest in the Commission.
>
> (2) Save as otherwise provided in sub-section (1), the superintendence of the said police establishment in all other matters shall vest in the Central Government.

> (3) The administration of the said police establishment shall vest in an officer appointed in this behalf by the Central Government (hereinafter referred to as the Director) who shall exercise in respect of that police establishment such of the powers exercisable by an Inspector-General of Police in respect of the police force in a State as the Central Government may specify in this behalf. "

11. Section 17 of the Prevention of Corruption Act, 1988 deals with investigation of cases under the Act and specifies the persons authorised to investigate. It further provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, no police officer below the rank – (a) in the case of the Delhi Special Police Establishment, of an Inspector of Police; (b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police; © elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or the Magistrate of the First Class as the case may be or make any arrest therefor without a warrant:

Provided that if a police officer not below the rank of an

Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as they case may be, or make arrest therefor without a warrant;

Provided further that an offence referred to in clause (e) of sub-section (1) of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

12. Section 19 of the Prevention of Corruption Act, 1988 provides that no court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction, -

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

© in the case of any other person, of the authority competent to remove him from his office.

Sub-Section (2) of S.19 provides that in case of doubt as to whether the previous sanction is to be given by the Central Government or

State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent remove the public servant from his office at the time when the offence was alleged to have been committed.

13. Clause (f) of sub-section (1) of S.8 of the Act provides that it will be the function and power of the Commission to review the progress of applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988. It is therefore obvious that as regards sanction to prosecute as provided by S.19(1) of the Prevention of Corruption Act it is to be given by the Government/authority enumerated therein and the function of the Central Vigilance Commission is to review the progress of applications for sanction and in such a situation, in my view, the contention that sanction had to be obtained from the Central Vigilance Commission, was rightly rejected by the learned Special Judge.

14. If S.17 of the Prevention of Corruption Act, 1988 authorises Inspector of Police in the case of Delhi Special Police Establishment to investigate any offence punishable under the said Prevention of Corruption Act, 1988, the Act by virtue of clause (d) of sub-section (1) of S.8 of the Act, also empowers the Central Vigilance Commission to inquire or cause an inquiry or investigation to be made into any complaint against any official

belonging to such category of officials specified in sub-section (2) wherein it is alleged that he has committed an offence under the Prevention of Corruption Act, 1988 and an offence with which a public servant specified in sub-section (2) may, under the Code of Criminal Procedure, 1973 be charged at the same trial.

Section 11 of the Act provides that the Commission shall, while conducting any inquiry referred to in clauses (b) and © of sub-section (1) of section 8, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 in respect of matters specified therein. Section 12 further provides that the proceedings before Commission to be judicial proceedings.

15. As already seen by virtue of clause (a) of sub-section (1) of S.8 the Central Vigilance Commission is required to exercise superintendence over the functioning of the Delhi Special Police Establishment insofar as it relates to the investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988 or an offence with which a public servant specified in sub-section (2) may, under the Code of Criminal Procedure be charged at the same trial. Clause (b) of sub-section (1) of S.8 further empowers the Central Vigilance Commission to give directions to the Delhi Special Police Establishment for the purpose of discharging the responsibility entrusted to it under sub-section (1) of section 4 of the Delhi

Special Police Establishment Act, 1946. The object particularly behind S.8 of the Act can be gathered from the observations of the Hon'ble Supreme Court in the case of **Vineet Narain v. Union of India (supra)** wherein the Supreme Court stated thus :-

" The CVC shall be responsible for the efficient functioning of the CBI. While Government shall remain answerable for the CBI's functioning, to introduce visible objectivity in the mechanism to be established for overviewing the CBI's working, the CVC shall be entrusted with the responsibility of superintendence over the CBI's functioning. The CBI shall report to the CVC about cases taken up by it for investigation; progress of investigations; cases in which chargesheets are filed and their progress. The CVC shall review the progress of all cases moved by the CBI for sanction of prosecution of public servants which are pending with the competent authorities, specially those in which sanction has been delayed or refused. ".

16. If by virtue of S.4 of the Prevention of Corruption Act, 1988 prior to its amendment by the Central Vigilance Commission Act, 2003 the power of superintendence was vested in the Central Government, now the same is vested in the Central Vigilance Commission after S.4 of the Delhi Special Police Establishment Act, 1946 has been replaced by the Central Vigilance

Commission Act, 2003. This Act has made no changes in S.17 of the Prevention of Corruption Act , 1988 as to the officers who are required to investigate offences punishable under the Prevention of Corruption Act, 1988. But the Act has introduced a new provision by virtue of clause (d) of sub-section (1) of S.8 of the Act which empowers the Central Vigilance Commission to inquire or cause an inquiry or investigation to be made into any complaint against any official belonging to such category of officials specified in sub-section (2) wherein it is alleged that he has committed an offence under the Prevention of Corruption Act, 1988. In other words, the Central Vigilance Commission has been authorised to conduct inquiries as regards offences under the Prevention of Corruption Act, 1988 as also to cause investigation to be made. It is nobody's case that in the case at hand any complaint was made to Central Vigilance Commission. On the other hand, it was made to the C.B.I. A con0joint reading of S,8(1)(d) of the Act and S.17 of the Prevention of Corruption Act, 1988 will show that the Central Vigilance Commission as well as officers mentioned in S.17 have been simultaneously given powers to carry out the investigation for offences under the Prevention of Corruption Act, 1988. The powers given to the Central Vigilance Commission under clause (d) of sub-section (1) of S.8 of the Act are in addition to and not in derogation of powers given to the officers of C.B.I. and others under Section 17 of Prevention of Corruption Act, 1988. The contention that the investigation had necessarily

to be conducted by the Central Vigilance Commission even without there being a complaint before it, has therefore got to be rejected. Needless to observe that even if any inquiry or investigation into any complaint is required to be made by the Central Vigilance Commission it is free to require the C.B.I. to conduct the same as the latter has now been brought under the superintendence of the Central Vigilance Commission. The first contention raised on behalf of the accused, therefore, has got to be rejected.

17. As far as the second contention is concerned, it is pointed out that there has been non-application of mind by the sanctioning Authority firstly because the sanction has been accorded under S.19(1)(c) when it ought to have been under S.19(1)(a) of the Prevention of Corruption Act, 1988; secondly because the accused has been referred to as Garrison Engineer, MES, Vasco while in fact the accused is a Garrison Engineer (P) NW, Vasco. Again it has been submitted that the words mentioned is not ' 24 deficient married accommodation for Navy at NOFRA, but ' Provision of Deficient Married Accommodation for 24 Lts at Goa Naval Area '.

18. There is no doubt that granting of sanction is not an empty formality and it is essential that the provisions as regards the grant of sanction should be observed completely, the object of granting sanction being that the authority giving the sanction should be able to consider for

itself the evidence before it comes to a conclusion that the prosecution in the circumstances of the case must be sanctioned or not. It is necessary for the sanctioning authority to consider the evidence before it and all the circumstances of the case whether the sanction is required to be given or not. As far as this case is concerned, the sanction has been given by the Under Secretary on behalf of the President of India, in the Ministry of Defence of Government of India. Whether such an Under Secretary was authorised to convey the sanction under the Rules of Business is a matter which would be required to be gone into at the trial and not at the prima facie stage of framing the charge. The sanction dated 24.9.03 issued by Order and in the name of the President of India and signed by the Under Secretary to the Government of India in the Ministry of Defence dated 24.9.03 has been produced and the same on the face of it at the prima facie stage has got to be considered as a valid sanction obtained for prosecuting the accused.

19. Therefore, in my view, the submission that there was no application of mind or for that matter it was issued by an Under Secretary who was not authorised are matters which are required to be gone into at the trial of the case and not at the prima facie stage.

20.In view of the above, I find there is no merit in this revision and hence the same is hereby dismissed.

N. A. BRITTO, J.

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